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***Attorneys for Defendants C. R. Bard, Inc. and
 Bard Peripheral Vascular, Inc.***

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA**

Case No. 2:15-MD-02641-DGC

IN RE: Bard IVC Filters Products Liability
 Litigation

**DEFENDANTS C. R. BARD INC. AND
 BARD PERIPHERAL VASCULAR
 INC.'S MOTION TO DISMISS
 DUPLICATIVE COMPLAINTS FILED
 IN THE MDL**

(Assigned to the Honorable David G.
 Campbell)

Pursuant to Fed. R. Civ. P. 12(b), Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. ("Bard") respectfully move this Court to dismiss without prejudice duplicative actions filed in the MDL.

I. FACTUAL AND PROCEDURAL HISTORY

At the Scheduling Conferences held on August 23, 2016, and December 9, 2016, Bard raised the issue of duplicative filings, and this Court explained that a plaintiff in more than one case in this MDL represented by different lawyers cannot proceed.¹

The following individuals have duplicate cases pending in the MDL: William Joseph Giambra, Betty Joyce Holland, Reginald Mathis, Bernadette McBride, Charlene Pedersen, Tracy Pirl, and Pamela M. Smith. As shown in Exhibit A attached hereto, and depicted in the chart below, more than one lawsuit has been initiated for each of these plaintiffs for a single cause of action, and all of the identified cases are currently pending in the MDL as parallel, duplicative cases.

Plaintiff	Docket Number	Date Filed
Giambra, Sr, William Joseph	CV-17-00191-PHX-DGC	1/20/2017
Giambra, Sr, William Joseph	CV-17-03891-PHX-DGC	10/24/2017
Holland, Betty Joyce	CV-16-03147-PHX-DGC	9/16/2016
Holland, Betty Joyce	CV-17-03440-PHX-DGC	10/4/2017
Mathis, Reginald	CV-17-03469-PHX-DGC	10/4/2017
Mathis, Reginald	CV-17-04302-PHX-DGC	11/27/2017
McBride, Bernardette	CV-16-01090-PHX-DGC	4/18/2016
McBride, Bernardette	CV-17-00876-PHX-DGC	3/24/2017
Pedersen, Charlene B	CV-17-00941-PHX-DGC	3/29/2017
Pedersen, Charlene B	CV-17-04308-PHX-DGC	11/27/2017
Pirl, Tracy	CV-17-00899-PHX-DGC	3/27/2017
Pirl, Tracy	CV-17-03025-PHX-DGC	9/6/2017
Smith, Pamela M	CV-17-00916-PHX-DGC	3/28/2017
Smith, Pamela M	CV-17-03089-PHX-DGC	9/11/2017

¹ See Exhibit B, August 23, 2016 Fifth Scheduling Conference Hr. Tr. at 90:12-19 (“We can’t go forward with two cases represented by two different lawyers. And consolidation isn’t the answer, in my view, because then you’ve still got two lawyers purporting to each represent the plaintiff. Unless they want to team up and jointly represent them in a single case, in which event just dismiss one and have the lawyer appear in the other. But I don’t think we ought to continue on with two cases with two different lawyers.”); December 9, 2016 Seventh Scheduling Conference Hr. Tr. at 48:18-49:10 (granting Bard’s motion to dismiss a complaint filed by a deceased individual and expressing concerns about the fact Bard sent several letters and e-mails to the plaintiff’s attorney and the PSC members before filing the motion to dismiss, but never received any response).

Before filing this motion, Bard sent several letters notifying each plaintiff's attorneys and the Plaintiff Steering Committee ("PSC") of the duplicative actions. *See* Ex. A. Each letter explained that the duplicate complaints raise the same claims for the same individual, and each letter requested that one of the cases be dismissed immediately. Since the first letter was sent in 2017, none of the identified duplicate cases listed in Exhibit A have been dismissed.² *See* Ex. A. Moreover, and perhaps most bothersome, no one in the Plaintiffs' leadership has even acknowledged Bard's requests, much less responded to them. As a result, Bard has incurred unnecessary costs from a duplication of labor.

For example, Bard has received two Plaintiff Profile Forms for every individual listed in Exhibit A except Bernadette McBride. In response, Bard has had to prepare two Defense Profile Forms and draft two deficiency notices for each individual. These costs could and should have been avoided. After several attempts to resolve the issue without intervention from this Court, Bard is left with no choice but to file this motion to dismiss the later-filed duplicative actions.

II. ARGUMENT AND CITATION TO AUTHORITY

A litigant "ha[s] no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant." *Walton v. Easton Corp.*, 563 F.2d 66, 70 (3d Cir. 1977); *Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), *overruled in part on other grounds* by *Taylor v. Sturgell*, 553 U.S. 880, 904 (2008). Federal courts, therefore, "retain broad powers to prevent duplicative or unnecessary litigation," *Slack v. McDaniel*, 529 U.S. 473, 478 (2000), which "includes the power to dismiss duplicative claims." *M.M. v. Lafayette Sch. Dist.* 681 F.3d 1082, 1091 (9th Cir. 2012) (finding that the district court did not abuse its discretion in dismissing duplicative claims) (internal citation omitted).

² A motion to dismiss was filed by Padberg, Corrigan & Appelbaum for Tracy Pirl, but the motion was filed in the individual case number, CV-17-03025-PHX-DGC, and received a deficiency notice. The two duplicate cases for Tracy Pirl remain open in the MDL. *See* Ex. A.

“A suit is duplicative if the claims, parties, and available relief do not significantly differ between the two actions.” *iStar RC Paradise Valley LLC v. Five Star Dev.*, No. CV-10-2191-PHX-GMS, 2011 WL 4852293, at *8 (D. Ariz. Oct. 13 2011) (quoting *Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999), *aff’d* 225 F.3d 1100 (9th Cir. 2000) (internal citation omitted)). Dismissal of the second action is proper “when a complaint involving the same parties and issues has already been filed[.]” *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982); *Barapind*, 72 F.Supp.2d at 1144 (where one suit is duplicative of another, “the court has discretion to abate or dismiss the second action.”). *See, e.g., Fed. Trade Comm’n v. Elec. Payment Sols. of Am. Inc.*, No. CV-17-02535-PHX-DJH, 2018 WL 3648409, at *4 (D. Ariz. Aug. 1, 2018) (granting defendant’s motion to dismiss plaintiffs’ duplicative claims that the plaintiffs had already asserted in another federal district litigation). Indeed, “increasing calendar congestion in the federal courts makes it imperative to avoid concurrent litigation[.]” *Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir. 1979).

The first-to-file doctrine of federal comity permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district. *Kerotest Mft. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180 (1952); *Pacesetter Systems*, 678 F.3d at 96. Three factors are considered in applying the first-to-file rule: (1) the chronology of the two actions; (2) the similarity of the parties; and (3) the similarity of the issues. *See Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622, 625-26 (9th Cir. 1991). The first-to-file rule is not rigid or inflexible, but is applied to serve sound judicial administration principles. *Pacesetter Systems*, 678 F.2d at 96. The rule may be dispensed with for equitable reasons; for example, when the later-filed action has progressed further, *see Church of Scientology of California v. United States Dept. of the Army*, 611 F.2d 738, 750 (9th Cir. 1979), or where “the balance of convenience weighs in favor of the later-filed action.” *Ward v. Follett Corp.*, 158 F.R.D. 645, 648 (N.D. Cal. 1994).

Here, there is no question that the claims, parties, and available relief do not differ between the two actions pending in the MDL for each individual identified in Exhibit A. In fact, the two actions are identical. As a principal of sound judicial administration, the first suit should have priority, absent a showing of balance of convenience in favor of the second case, or unless there are special circumstances which justify giving priority to the second action. Bard is unaware of any special circumstances that prevent application of the first-to-file rule. Due to the duplicative nature of the actions identified in Exhibit A, the later-filed complaint should be dismissed without prejudice.

WHEREFORE, Bard respectfully requests that this Court enter an Order dismissing the duplicative actions identified in Exhibit A for the foregoing reasons.

This 4th day of March, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 4, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to all counsel of record.

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